

OFFICIAL COMMENT

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Mary Ann Stevens
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100 North Senate Avenue
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**Subject: LSA Document #08-764 – Notice of Comment Period
Development of New Rules and Amendments to Rules Concerning
Antidegradation Standards and Implementation Procedures**

Dear Ms. Stevens:

I am writing this letter on behalf of the Indiana Steel Environmental Group (ISEG) to provide comments on LSA #08-764, Development of New Rules and Amendments to Rules Concerning Antidegradation Standards and Implementation Procedures.

The Indiana Steel Environmental Group is a coalition of Indiana steel companies established to focus on environmental matters of concern to its members. The Indiana Steel Environmental Group (ISEG) consists of membership from ArcelorMittal USA, ArcelorMittal Indiana Harbor Inc., United States Steel Gary Works, United States Steel Midwest Plant, United States Steel East Chicago Tin Operations, I/N Tek, I/N Kote, ArcelorMittal Burns Harbor LLC, and Nucor Steel Crawfordsville.

The Indiana Steel Environmental Group's primary concern regarding antidegradation continues to relate to the practical impacts of implementation. If not properly implemented, the program could place severe limitations on important social and economic development and economic progress for the affected communities, without resulting in any significant benefit to water quality. This could seriously impede attempts to revitalize impoverished communities through Brownfield redevelopment and could compromise the competitiveness of existing industries by limiting their ability to expand operations or change technologies.

The preliminarily adopted rule has several major issues that need to be addressed before final adoption.

1. Section 1(b) of the proposed rule is much too broad and vague than the legislature intended when it passed Indiana Code 13-18-3-2(k) & (l) and is likely to lead to misinterpretations of rule applicability in the future. The applicability provision should be

limited to only those instances where there is a new or increased loading of a regulated pollutant for which a new or increased permit limit is required.

2. The definition of “Significant lowering of water quality” in the proposed rule is inconsistent with the requirements in Indiana Code 13-18-3-2(l)(1)(A) which limits antidegradation review to new or increased loadings “for which a new or increased permit limit is required.”
3. The draft rule includes a concept of a “benchmark available loading capacity” that is much more stringent than what is required by Indiana Code 13-18-3-2 and federal regulation. USEPA has approved other State’s regulations with no such cap and we encourage IDEM to either remove or revise the rule to include a reasonable benchmark loading capacity to ensure that *de minimis* permitted increases do not reduce the unused loading capacity.
4. At Section 4(c)(1)(A)(ii) and (iii), the rule implies that the benchmark loading capacity as calculated during the initial request will remain indefinitely. There is no reason to maintain the initial benchmark loading capacity and ignore changes that may occur to the stream that increase unused loading capacity. If a discharge is eliminated or reduced upstream there will be a greater assimilative loading capacity downstream. If the concept of a benchmark loading capacity remains in the rule it must be revised to allow the benchmark loading capacity to be re-calculated if conditions in the water body change.
5. The concept of a water quality improvement project in Section 7 of the proposed rule is contrary to the clear intent of IC 13-18-3-2(k) and (l). The clear intent of the statutory language has always been that the performance or funding of a water quality improvement project will be the primary basis of gaining approval for the increased loading by a discharger to an OSRW. As written, the proposed Section 7 requires the water quality improvement project be performed or funded in addition to an antidegradation demonstration.

Section 5 of the proposed rule does not clearly implement the understanding referenced above and could leave a discharger proposing a water improvement project and an obligation to prepare a full antidegradation demonstration. To address this, Section 5(b) should be modified to expressly provide that a project involving payment of a water improvement fee is included within subsection 5(b). With these revisions, a proposed increase in loading to an OSRW involving a water improvement project implementation or fee payment will satisfy the antidegradation demonstration requirements with submittal of the basic information of Section 5(a) and the “necessary” information of Section 5(c).

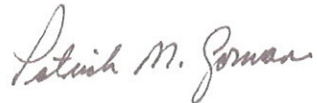
The Indiana Steel Environmental Group believes that the final antidegradation standard and implementation procedures should be designed with a dual purpose of protecting Indiana’s water resources while supporting the economic viability of existing industries and affected communities.

The State of Indiana has already developed and adopted water quality standards that establish limits for which constituents can be discharged to Indiana's water resources without harm. The antidegradation standard should support these provisions.

The ISEG strongly believes that the final rule should not impose requirements on Indiana's waters that are more restrictive than neighboring Great Lakes States placing Indiana at a clear economic disadvantage.

Thank you for your consideration of these comments. If you have any questions please feel free to contact me at patrick.gorman@eptconsultants.com or phone at 219-836-1000.

Sincerely,



Patrick M. Gorman, P.E.
Facilitator, Indiana Steel Environmental Group